



July 11, 2000

Ms. Patricia Muniz-Chapa
Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2902

OR2000-2579

Dear Ms. Muniz-Chapa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136928.

The University of Texas System (the "system") received two requests for all winning proposals for the system's travel services and other related information. Although you do not raise an exception to disclosure on behalf of the system, you advise this office that the requested information may involve the proprietary or property interests of The All Seasons Travel Group ("All Seasons"), Corporate Travel Planners, Inc. ("Corporate"), Sun Travel ("Sun"), and Rennert World Travel ("Rennert") and, therefore, the system is asking this office for a decision under section 552.305(a) of the Government Code. You have submitted a copy of a letter notifying All Seasons, Corporate, Sun, and Rennert about the request as required by section 552.305(d). *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to the Public Information Act in certain circumstances).

As of the date of this letter, Corporate has not submitted to this office its reasons explaining why the requested information should not be released. Therefore, we have no basis to conclude that the responsive information is excepted from disclosure. *See* Gov't Code § 552.110(b)(to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it

actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Thus, the system must release the requested information pertaining to Corporate to the requestor.

All Seasons, Sun, and Rennert have submitted briefs in which they contend that portions of the respective proposals are excepted by section 552.110 of the Government Code. Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (a) trade secrets obtained from a person and privileged or confidential by statute or judicial decision; and (b) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

A “trade secret”

may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business in that it is not simply information as to single or ephemeral events in the conduct of the business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company’s] business;
- (2) the extent to which it is known by employees and others involved in [the company’s] business;

- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing this information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 232 (1979). This office must accept a claim that information is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990). However, where no demonstration of the factors necessary to establish a trade secret claim is made we cannot conclude that section 552.110 applies. Open Records Decision No. 402 (1983).

Rennert asserts that pricing information, including pricing structure and related data, and customer lists are excepted from disclosure under section 552.110(a). However, we do not believe that the pricing information may be protected under section 552.110. *See* Open Records Decision No. 509 at 5 (1988) (stating that because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), *see generally* Open Records Decision No. 319 (1982) (stating that pricing proposals are entitled to protection only during bid submission process); *see also* Gov't Code § 552.022(a)(3) (information in an account, voucher, or contract relating to the receipt or expenditure of public funds by a governmental body is public information); Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government contractors), 184 (1978). Further, we do not believe that Rennert has demonstrated that information pertaining to organization, experience, personnel, and offices contain trade secret information. *See generally* Open Records Decision No. 319 (1982) (information relating to organization, personnel, qualification, and experience not ordinarily trade secret information). In addition, it appears that portions of the proposals relate exclusively to a particular circumstance, that is, "single or ephemeral events in the conduct of the business" rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); Open Record Decision Nos. 319 at 3 (1982), 255 (1980). Therefore, we conclude that pricing and organizational information may not be withheld as trade secrets under section 552.110(a).

However, we believe that Rennert has demonstrated that its customer information constitutes trade secrets. Accordingly, we have marked the customer information that you may withhold pursuant to section 552.110(a).¹ The system must release the remaining information in the Rennert proposal.

All Seasons argues that pricing information, savings estimates, and data analysis are protected from disclosure under section 552.110. After reviewing the arguments, we do not believe that All Seasons has demonstrated that its pricing and organizational information constitutes trade secrets. *See generally* Open Records Decision Nos. 509 at 5 (1988), 319 (1982). Although All Seasons has marked customer information on its proposal to be withheld, All Seasons has not demonstrated that its customer information qualifies as a trade secret. Because All Seasons has failed to demonstrate that its customer information constitutes trade secrets, we conclude that the All Seasons proposal is not excepted from disclosure under section 552.110(a) of the Government Code and must be released in its entirety.

Sun claims that its proposal reveals its thought processes, number of clients and their volumes, and purchased third-party software. In its brief, Sun argues that the proposal process is protected and privileged rather than demonstrating that specific portions of its proposal is a trade secret. Therefore, Sun has not demonstrated that any specific information in the proposal qualifies as a trade secret under section 552.110(a). Sun also contends that its proposal is protected from disclosure under the financial or commercial information branch of section 552.110, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov’t Code § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Because Sun has failed to demonstrate, based on specific factual evidence, that release of the information would cause substantial competitive harm, we conclude that the proposal is not excepted from disclosure under section 552.110(b). *See* Open Records Decision No. 319 at 3 (1982).

We note that Sun also asserts that its proposal is excepted from disclosure under section 552.104 of the Government Code. The purpose of section 552.104 is to protect the interests of a *governmental body* in situations such as competitive bidding and requests for proposals

¹We note that the system has marked customer information as well as text in the proposals. However, Rennert also submitted copies of the documents with proposed redactions with its briefing and only marked the customer information.

in which the governmental body may wish to withhold information to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information, such as bids and proposals, to governmental bodies. *Id.* at 8-9. Because Sun has no standing to assert the protection of section 552.104, we do not address its arguments under that exception. Therefore, Sun's proposal may not be withheld under section 552.104. Accordingly, you must release Sun's proposal.

In summary, we have marked the portions of the Rennert proposal that the system must withhold pursuant to section 552.110. The system must release the entire All Seasons, Sun, and Corporate proposals.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

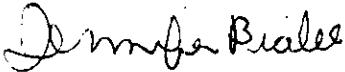
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 11 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/pr

Ref: ID# 136928

Encl. Marked documents

cc: Mr. Richard Dayoub
Buck Rogers Travel
1760 Airway Boulevard, Suite 106
El Paso, Texas 79925
(w/o enclosures)

Mr. Jeff Antonelli
President
Travel Counselors, Inc.
2202 Mechanic St.
Galveston, Texas 77550
(w/o enclosures)

Ms. Christy Richardson
Corporate Travel Planners, Inc.
800 Northwest Loop 140, Suite 306 South
San Antonio, Texas 78216
(w/o enclosures)

Ms. Duane P. Coleman
Vice President
Sun Travel
3100 North Mesa, Suite B
El Paso, Texas 79902
(w/o enclosures)

Mr. Alexander N. R. Shreders
Executive Vice President
The All Seasons Travel Group
4801 Woodway, Suite 400 East
Houston, Texas 77056
(w/enclosures)

Ms. Virginia Harris
Vice President of Business Travel
Rennert World Travel
8103 Broadway
San Antonio, Texas 78209
(w/enclosures)